

DOCUMENT RESUME

02087 - [A1232222]

[Protest against Proposed Award of Contract for Power Amplifier Assemblies with Shipping Containers]. B-188370. April 28, 1977. 2 pp.

Decision re: Omni-Wave Electronics Corp.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: General Property and Records Management (804).

Organization Concerned: Department of the Army: Army Armament Command, Rock Island, IL; Varian Associates.

Authority: A.S.P.R. 3-805.3(c). 48 Comp. Gen. 323. B-173536 (1971). B-186053 (1976).

Protester contended that notification of performance of a preaward survey prior to calling for best and final offers was an auction technique. Mere notification to an offeror that a preaward survey will be performed is not per se a prohibited auction technique. No direct evidence was offered to support the protester's allegation that other offerors may have been informed of the impending survey of the protester's facilities or that pricing information was revealed. (Author/SC)

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Richard Feldman  
Proc. I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-188370

DATE: April 28, 1977

MATTER OF: Omni-Wave Electronics Corporation

**DIGEST:**

Mere notification to offeror that preaward survey will be performed is not per se prohibited auction technique. Furthermore, no direct evidence was offered to support protester's allegation that other offerors may have been informed of impending survey of protester's facilities or that pricing information was revealed.

Omni-Wave Electronics Corporation (Omni-Wave) protests the proposed award of a contract to Varian Associates for 344 power amplifier assemblies with shipping containers. Award has not been made pending resolution of this protest.

On November 8, 1976, request for proposals (RFP) DAA409-77-R-3008 was issued by the United States Army Armament Command, Rock Island, Illinois (USAAC), requesting offers on alternative quantities of 230 and 344 power amplifier assemblies with shipping containers. Initial proposals were received and opened on January 10, 1977. Subsequently, by letters dated January 17, 1977, preaward survey monitors were requested to perform preaward surveys on several low offerors for the quantity of 344 amplifiers. It was requested that these surveys be conducted on or about February 3, 1977. On January 20, 1977, Omni-Wave was notified that a preaward survey would be performed on February 3, 1977. The record discloses that no preaward survey was performed at Omni-Wave. On January 19, 1977, USAAC requested best and final offers for 344 amplifiers to be submitted on January 27, 1977. Based on the best and final offers received, all but one of the preaward surveys were canceled. Only the preaward survey monitor cognizant of the low offeror was permitted to proceed with a survey.

Because it was notified that a preaward survey would be instituted, Omni-Wave assumed that it would receive an award. Omni-Wave contends that the notification that a preaward survey

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would be performed prior to calling for best and final offers revealed the relative positions of the offerors during negotiations and hence was an auction technique. Omni-Wave believes that if other offerors were aware that a preaward survey would be performed on Omni-Wave, these offerors were afforded an opportunity to lower their prices for submission as their best and final offers.

ASPR § 3-805.3(c) (1976 ed.) provides:

"Auction techniques are strictly prohibited; an example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high."

Although the mere institution of a preaward survey during negotiations can give rise to inferences respecting price relationships, such action per se is not a prohibited auction technique. See 48 Comp. Gen. 323 (1968); B-173536, October 22, 1971. Similarly, we believe that the mere notification that a preaward survey would be performed is not per se a proscribed auction technique.

The agency states that other offerors were notified that a preaward survey would be performed on them. None of the other offerors knew that a preaward survey would be performed on any other offeror. Each offeror was only aware of the facts relative to its own particular circumstances. Furthermore, there is no direct evidence to show that the notification of the survey caused the prices or relative standings of the offerors to be disclosed. In fact, the prices received in response to the request for best and final offers were identical to those offers received initially. Consequently, there is no basis for the contention that any pricing or technical information was improperly disclosed. Even if an offeror had substantially lowered its price between its initial proposal and best and final offer, it does not indicate the existence of a price leak since it is not uncommon for an offeror to withhold its lowest price until best and final offers are submitted. Adam David Company, B-186053, July 28, 1976, 76-2 CPD 88.

On the basis of the foregoing, the protest is denied.

  
Deputy Comptroller General  
of the United States